

July 21, 2005

Michael Gallagher  
PBT Coordinator  
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P.O. Box 47600  
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Subject: Comments on Proposed Chapter 173-333 WAC - *Persistent Bioaccumulative Toxins* Regulation

Dear Mr. Gallagher:

Weyerhaeuser Company appreciates this opportunity to offer written comments on the draft regulation. While not an active participant in the process, we are aware that the PBT Rule Advisory Committee met on numerous occasions and provided important policy and technical viewpoints which surely assisted Ecology in developing this draft rule. The opportunities to provide input, and the professionalism exhibited by you, other Ecology staff and the meeting facilitator in marching the committee process forward, were both appreciated.

Weyerhaeuser supports the comments being submitted by the Northwest Pulp and Paper Association, the National Council for Air and Stream Improvement, and the Association of Washington Business.

### **General Comments**

Comment – Different phrases are used throughout the draft regulation to describe the fundamental objective of reducing the exposure of PBTs to humans, plants and animals.

Discussion – The following phrases are used in the regulation:

“minimize or eliminate threats to human health or the environment”	– WAC 173-333-100
“reduce and eliminate the uses and releases”	-100
“reduce and eliminate the releases and uses”	-100
“pose human health or environmental impacts”	-110(1)
“measures to prevent harm to human health and the environment”	-140(1)
“to manage, reduce or eliminate such uses and releases”	- definition of CAP in -200
“pose threats to human health and environment”	-300(1)
“to reduce PBT uses, releases and exposures”	-300(2)(d)

“does not represent a decision that all uses and releases of that chemical should be reduced and eliminated”	-300(3)(a)
“reducing or phasing out uses and releases of the chemical”	-310(3)(c)(i)
“reducing and eliminating uses and releases”	-400(2)(a)
“reducing or phasing out uses, production or releases”	-410(3)(a)(ii)
“reduce and phase out uses and releases”	-410(3)(a)(v)
“managing, reducing and eliminating”	-420(1)(e)
“manage, reduce or phase-out uses and releases”	-420(1)(f)(i)
“managing uses and releases”	-430(2)

In some instances the policy intent and regulatory context requires slightly different action phrases or words. Where possible, standard language should be used to avoid variable interpretations of the regulation. We generally prefer “reducing exposure” to phrases using “threat,” “harm” or “impact.” “Phase out” seems better than “eliminate.”

### Specific Comments

**WAC 173-333-140(1) Scientific Information** – The second sentence in this subsection announcing a decision-making bias based on a precautionary principle is unnecessary and should be removed.

Discussion – This regulation will be useful, credible, accepted and actively supported primarily because it has a science-based foundation. Physical, chemical and biological criteria will be defined in rule to identify PBTs. The CAP development process will reveal the effective and reasonable measures that can be taken to reduce human health and environmental exposures. This logical and transparent approach would be undercut should Ecology reserve to itself an ability to impose a decision based on inconclusive science.

**WAC 173-333-140(5) Coordination** – Adjust the sentence to read “Ecology will coordinate with federal, other state...”.

Discussion - Ecology should also be willing to coordinate with federal regulatory agencies on matters relating to PBT identification, and CAP development and implementation.

**WAC 173-333-200 Chemical Action Plan** - The terms of a CAP should incorporate the concept of feasibility. Please consider adjusting the definition to read “...facilitates implementation of measures to manage, and where feasible, reduce or phase out such uses and releases.”

Discussion – The term “feasible” will be defined in the regulation. As a matter of “good public policy,” the elements of any Chemical Action Plan must consider feasibility.

**WAC 173-333-310(2) PBT List** – The PBT list should be chemical specific. References to a “Chemical Group” throughout the regulation should be removed.

Discussion – Consistent with the National Council for Air and Stream Improvement comment letter on this issue we note that every chemical exhibits its own unique properties with respect to persistence, bioaccumulation and toxicity. For the most part the presentation of PBTs groups in the list is footnoted to specify the particular chemical. If Ecology would follow this same approach for polychlorinated biphenyls there will be no need for any reference to Chemical Groups.

**WAC 173-333-310(2) PBT List** – Cadmium and Lead should be removed from the proposed PBT list at this time.

Discussion – The notation added for these two elements indicates the evaluation of bioavailability is still underway. Until that work is complete and specific compounds can be identified, these elements are not ready for placement on the list.

**WAC 173-333-320(2)(c) Toxicity** – The phrase “known to cause or can reasonably be anticipated to cause” should be better defined.

Discussion – As drafted, the decision basis for toxicity appears to be a “best professional judgment” determination by Ecology. There are objective science-based measures or indices defining these properties. Ecology should consider incorporating a system for scoring or ranking chemical based on what is known about their toxicity so that these decisions will be made in a systematic and transparent manner.

**WAC 173-333-340(3) Public Notification** – A technical and regulatory discussion paper supporting the addition or removal of a chemical should be developed and be part of the public notification.

Discussion – The need for a written presentation is implied, but not specifically mentioned, as part of the public notification process.

Thank you for the opportunity to make these comments.

Sincerely,

Ken Johnson  
Washington Regulatory Affairs Manager